EQUITY—CONCURRENT JURISDICTION WITH LAW—FRAUD—ADEQUATE REMEDY AT LAW.—The Supreme Court of Virginia recently had occasion to pass upon the question as to when equity would exercise its concurrent jurisdiction with that of law, in a case involving fraud, where the remedy sought was plain, adequate and complete at law.[1]

In the instant case there had been a sale of stock, the value of which had been fraudulently misrepresented. The plaintiff filed a bill in equity asking for relief *in damages* for the fraud. The point squarely up to the court was whether it would entertain such a bill, the sole grounds upon which the exercise of such jurisdiction was sought being the fact there had been *fraud* in the transaction. The plaintiff did not ask for relief peculiarly within the province of a court of equity, but merely sought a pecuniary decree for damages. This a court of law could adequately and completely give and thereby preserve to the defendant the right of trial of his cause by jury. The court held that equity would not entertain such a bill. The claim was purely legal, the allegations in the bill sufficient to support such a claim, and the remedy asked for, being plain, adequate and complete at law, it should be brought there and not in equity.[2]

In so holding, the Virginia Court is in accord with the tendency of previous authorities of this State, and with the prevailing American view on this subject. However, in England and in a few American cases a contrary view is maintained.

The American cases on this subject then may be divided into two classes:

(1) Those which follow the English doctrine, under the supposition that fraud alone is ground for equity jurisdiction, and not the original lack of remedy at law;[3] (2) and those which recognize the fact that a lack of adequate remedy at law is the foundation of the jurisdiction.[4] In the first class the existence of an adequate remedy at law affects only the discretionary exercise of the jurisdiction; while in the second class, it is regarded as limiting the jurisdiction to cases where such remedy is inadequate.

In England courts of chancery have held that the existence of an adequate and complete remedy at law would not prevent the exercise of their jurisdiction. That its absence at law was

[1] Ewing *v.* Dutrow (Va.), 104 S. E. 791.

[2] It might be interesting to note that if the new Code had been in force at the time the decree appealed from was entered, it would have been the duty of the trial court under § 6084, Code 1919, to transfer this case to the common law docket, and to order such changes and amendments of pleadings as might be necessary to conform them to the usual and proper practice in common law actions.

[3] Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722, 5 L. R. A. (N. S.) 1036 and note; Nathan *v.* Nathan, 166 Mass. 294, 44 N. E. 221 (under local statute); Brittin *v.* Crabtree, 20 Ark. 309.

[4] Root *v.* Lake Shore, etc., R. Co., 105 U. S. 189, 207; Johnson *v.* Swanke, 128 Wis. 68, 107 N. W. 481; Buck *v.* Ward, 97 Va. 209, 33 S. E. 513; Kane *v.* Va. Coal & Iron Co., 97 Va. 329, 33 S. E. 627.

merely explanatory of the origin of the jurisdiction of equity and did not define a constant limit on its exercise in every case that arises. And so, numerous cases are to be found where equity has granted relief by decree for the payment of a sum of money due by contract, although it was equally recoverable at law. The English authorities hold that once equity has assumed jurisdiction, from whatever source derived, and regardless of the fact that subsequently there is an adequate and complete remedy at law, equity will continue to exercise it. In cases involving fraud, therefore, they say it is simply the fact that there is fraud involved, and not the relief asked, that determines the jurisdiction.

But the vast majority of our American authorities deny that fraud is in itself the basis of the jurisdiction, and that equity would give relief purely on that ground, regardless of the presence of a sufficient remedy at law. The *sine qua non* of equity jurisdiction is in such cases, they say, the fact that there is an *inadequate* remedy at law. "Equity was made to supplement, not to supplant the law." The only reason equity ever obtained jurisdiction was the fact that there was no relief at law under certain circumstances. And such should remain the case. Let equity continue to supplement the law, and make up for its rigor and harshness, but when the law affords the proper remedy, and there is not distinctive relief asked of equity, the parties should pursue their cause at law.

Pomeroy, in discussing the subjects of which courts of equity and courts of law have jursidiction, says:

> "Even when the cause of action, based upon a legal right, does involve or present, or is connected with, some particular feature or incident of the same kind as those over which the concurrent jurisdiction ordinarily extends, such as *fraud,* accounting, and the like, still, if the legal remedy by action and pecuniary judgment for debt or damages would be complete, sufficient, and certain,— that is, would do full justice to the litigant parties—in the particular case, the concurrent jurisdiction of equity does not extend to such a case." [5]

Story voices the same view:

> "In general, courts of equity will not assume jurisdiction, where the powers of the ordinary courts are sufficient for the purposes of justice. And, therefore, it may be stated as a general rule, subject to few exceptions, that where the plaintiff can have as effectual and complete a remedy in a court of law as in a court of equity, and that remedy is direct, certain, and adequate, a demurrer, which is in truth a demurrer to the jurisdiction of the court, will hold." [6]

It therefore appears, that the decision of the Virginia Court in *Ewing* v. *Dutrow, supra,* is in harmony with the great weight of authority in this country. S. B. W.

---

[5] POMEROY, EQUITY JURISPRUDENCE, § 178.
[6] STORY, EQUITY PLEADINGS, § 473.